

Attorney for the Labor Commissioner

LESLIE REDDEN,

CASE NO. TAC 13-06

## DETERMINATION OF CONTROVERSY

Respondent.

Based on the evidence presented at this hearing and on the other papers on file in this matter, the Labor Commissioner hereby adopts the following decision.

**FINDINGS OF FACT**

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2       1.     At all times relevant here, Petitioner LESLIE REDDEN, (hereinafter  
3 referred to as "Petitioner"), has been a resident of California.

4       2.     Petitioner is a promotional model.

5       3.     The Division of Labor Standards Enforcement's Licensing and Registration  
6 unit's records do not show that Respondent CANDY FORD GROUP, (hereinafter,  
7 "Respondent") is a licensed Talent Agent in the State of California.

8       4.     On February 22, 2005, Petitioner entered into a written contract with  
9 Respondent wherein Respondent agreed to act as Petitioner's modeling agency. The  
10 contract provided that on all work obtained for the models, the models were required to fill  
11 out time sheets which they were to fax to Respondent so that Respondent could bill the  
12 client. Additionally, the contract provided that once Respondent was paid by the client for  
13 the model's services, payment would be forwarded to the model within three weeks.

14       5.     On December 1, 2005, Respondent e-mailed Petitioner informing her that she  
15 had been selected to work as a promotional model at the screening of Warren Miller's ski  
16 movie, "Higher Ground," in Pasadena, California on December 7 and 9, 2005 from 6:30  
17 p.m. to 9:00 p.m. each night at \$60.00 per hour. The e-mail also informed Petitioner of the  
18 on-site contacts, parking reimbursement, and required wardrobe. Petitioner was instructed  
19 to contact Respondent if there was an emergency and she could not make it to the event or if  
20 she could not reach the on-site contact person. Attached to the e-mail was a time sheet that  
21 Petitioner was required to fill out and have signed by an event manager.

22       6.     Petitioner worked at the Warren Miller event three hours on December 7, 2005  
23 and three hours on December 9, 2005. Petitioner's time sheet for both days showing a total  
24 of six hours worked, was approved, signed by a Warren Miller manager/supervisor, and  
25 submitted to Respondent for payment.

26       7.     On February 27, 2006, Petitioner received a check from Respondent for  
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1 \$20.00 to cover the bank fees charged on a previous check that Respondent had sent  
2 Petitioner which had bounced. On or about March 21, 2006, Petitioner was informed by her  
3 bank that the \$20.00 bank fee check also bounced. Consequently, Petitioner was charged  
4 another \$20.00 bank fee. As of the date of this hearing, Respondent had failed to reimburse  
5 Petitioner for the \$40.00 incurred in bank fees.

6 8. On March 17, 2006, after still not having received payment from Respondent  
7 on the December 7 and 9, 2005 Warren Miller event, Petitioner contacted Warren Miller  
8 Entertainment directly by e-mail to inquire as to whether they had paid Respondent for  
9 Petitioner's services. Petitioner informed Warren Miller that Respondent had informed her  
10 that they still had not been paid by Warren Miller and therefore had the "right" not to pay  
11 her for the modeling work. A representative from Warren Miller responded to Petitioner's  
12 e-mail writing that their records indicated that their payments to Respondent were up to date.  
13 However, as of November 16, 2006, the date of this hearing, Petitioner still had not received  
14 payment from Respondent for this event.

15 9. Respondent submitted a response to the petition dated May 8, 2006 in which it  
16 claims that it cannot issue a replacement check for the bounced checks until Petitioner  
17 submits a copy of the second check that allegedly bounced. Copies of Respondent's Check  
18 Numbers 20574 and 20897 were submitted as evidence at the hearing. Both checks are  
19 stamped "insufficient funds."

20 10. With regard to the Warren Miller event, Respondent claims that Petitioner was  
21 only entitled to payment for 2.5 hours per day instead of 3 hours per day per the e-mail  
22 Respondent sent Petitioner listing the work hours as 6:30 p.m. to 9:00 p.m. each day.  
23 Furthermore, Respondent claims it has not been paid by Warren Miller in full and that it is  
24 still actively seeking payment from them.

25 11. Petitioner filed a petition to determine controversy with the Labor  
26 Commissioner on April 21, 2006 seeking disgorgement of all monies owed to Petitioner by  
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Respondent, including bank fees.

### **LEGAL ANALYSIS**

1. Petitioner, a model, is an “artist” within the meaning of Labor Code §1700.4(b).

2. Labor Code §1700.4(a) defines “talent agency” as, “a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists.”

3. Labor Code §1700.5 provides that no person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner. Any agreement between an artist and an unlicensed talent agency is unlawful and void *ab initio* and the licensed talent agency has no right to retain commissions arising under such an agreement. *Waisbren v. Peppercorn Productions, Inc.* (1995) 41 Cal.App.4th 246, *Buchwald v. Superior Court* (1967) 254 Cal.App.2d 347.

4. The evidence presented establishes that Respondent procured work for Petitioner in the entertainment industry without being licensed as a talent agency in the State of California. Specifically, by e-mail dated December 1, 2005, Respondent contacted Petitioner to inform her that it had obtained a job for her as a promotional model for Warren Miller’s ski movie called “Higher Ground.” Such procurement is in violation of the Talent Agencies Act.

5. The evidence also establishes that while Petitioner was only scheduled to work 2.5 hours per day, Warren Miller approved 3 hours per day. As such, they became obligated to pay her for a total of 6 hours.

6. Respondent’s response to the petition is not credible. It is hard to believe that Respondent has not received payment on an event that took place in December, 2005. While the response is dated May 8, 2006, no evidence was submitted by Respondent showing that as of the date of the hearing, November 13, 2006, it still had not received

1 payment from Warren Miller.

2 7. Moreover, Respondent made no attempt from May 8, 2006 to the hearing date  
3 to pay the bank fees that it clearly owes Petitioner for the two bounced checks.  
4 Respondent's refusal to pay until it received a copy of the second bounced check is in bad  
5 faith, especially since it has access to its own bank information.

6 8. Since Respondent has violated the Talent Agencies Act by acting as a talent  
7 agent without being licensed, its contract with Petitioner is void *ab initio*. Consequently,  
8 Respondent is not entitled to any monies that it received from third parties on Petitioner's  
9 behalf for work performed by Petitioner. This includes all amounts that were billed to and  
10 received from third parties by Respondent for work performed by Petitioner that were above  
11 and beyond the amounts actually paid to Petitioner by Respondent, which we view as  
12 commissions. Because the contract between the parties is void *ab initio*, Respondent has no  
13 rights to such monies / commissions. *Yoo v. Robi* (2005) 126 Cal.App.4th 1089, 1103-1104.

14 **ORDER**

15 For the reasons set forth above, IT IS HEREBY ORDERED that the aforementioned  
16 contract between Petitioner LESLIE REDDEN and Respondent CANDY FORD GROUP is  
17 unlawful and void *ab initio*. Respondent is ordered to pay Petitioner \$60.00 in bank fees  
18 and \$360.00 in unpaid monies collected on Petitioner's behalf for a total of \$420.00.

19 Respondent is further ordered to provide an accounting to Petitioner within thirty (30)  
20 days of this determination of all amounts billed to and monies received from third parties  
21 during the period of April 22, 2005 to April 21, 2006 for work performed by Petitioner.  
22 Respondent shall reimburse the Petitioner for those monies, (less any payments already  
23 made), within sixty (60) days from the date of this determination.

24  
25 Dated: April 9, 2007

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EDNA GARCIA EARLEY  
Special Hearing Officer  
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1 **Adopted:**

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3 Dated: *April 9, 2007*

*Robert A. Jones*  
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ROBERT JONES  
Acting State Labor Commissioner

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I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is DIVISION OF LABOR STANDARDS ENFORCEMENT, Department of Industrial Relations, 320 W. 4<sup>th</sup> Street, Suite 430, Los Angeles, CA 90013.

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